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9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE TERRITORY OF GUAM

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 vs.

15 JOHN D. WALKER,
aka JON WALKER,
16 MARVIN R. REED,
KENNETH R. CROWE,
17 PHILLIP T. KAPP,
RANDALL ROGERS, and
HANSEN HELICOPTERS, INC.

18 Defendants.
19

CRIMINAL CASE NO. 18-00010

**UNITED STATES' MOTION IN LIMINE
TO EXCLUDE OIG REPORT AV2017049
AND ANY ARGUMENT RELATING TO
THE QUALITY OF FAA'S OVERSIGHT
OF THE SUSPECTED UNAPPROVED
PARTS PROGRAM**

20 COMES NOW, the United States, by and through undersigned counsel, and herein
21 respectfully moves this Honorable Court to exclude both the United States Department of
22 Transportation Office of Inspector General ("OIG") Report AV2017049, and any argument
23

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1 relating to the quality of FAA’s oversight of the Suspected Unapproved Parts (“SUPs”) program.¹

3 ARGUMENT

4 The United States anticipates Defendants may use the results of a 2017 OIG report,
5 outlining deficiencies in the SUPs program, to argue the FAA failed to properly oversee the
6 program rendering it vulnerable to fraud and abuse. The SUPs program is designed to monitor
7 and detect aircraft parts that may have been manufactured without FAA approval, may have
8 inaccurate paperwork, or were produced via counterfeit manufacturing. The OIG Report lists
9 several recommendations to increase the effectiveness of FAA’s oversight of the SUPs program.
10 The Court should deny admission of this evidence and any related arguments because it is
11 irrelevant, constitutes “victim-blaming,” and is unduly prejudicial. Its use at trial by Defendants
12 would only be as a diversion to direct attention away from Defendants’ own culpability for the
13 allegations in the Second Superseding Indictment, or to confuse the jury as to the issues it must
14 decide in the case according to the applicable jury instructions.

15 For the reasons explained below, the Report and any related argument should be excluded
16 at trial; however, if the Court denies this motion, the Government respectfully reserves the right
17 to argue exclusion of specific portions of the report.

18 I. The OIG Report and Related Argument Should Be Excluded as Irrelevant 19 and Victim Blaming.

20 Rules 401 and 402 of the Federal Rules of Evidence deem evidence admissible only if it
21 has a tendency to make the existence of any fact of consequence to the determination of the
22 action more or less probable. Fed. R. Evid. 401, 402. Relevancy determinations are at the

23 ¹ Office of Inspector General, Report No. AV2017049, Enhancements Are Needed to FAA’s Oversight of the
24 Suspected Unapproved Parts Program (2017).
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1 Court's discretion. *United States v. Miranda-Uriarte*, 649 F.2d 1345, 1353 (9th Cir. 1981). The
2 OIG Report and any argument pertaining to the quality of FAA's oversight of the SUPs program
3 are irrelevant because they do not have the tendency to make any fact relating to Defendants'
4 criminal activity more or less probable. The Report and quality of FAA's oversight measures
5 have no bearing on the fact that Defendants knowingly and willfully engaged in fraud by making
6 materially false representations concerning the aircraft parts they purchased from an entity that
7 did not have a Product Manufacturing Authority (PMA).

8 Likewise, regardless of any argument there were internal controls FAA could have or
9 should have implemented, Defendants went to great lengths to illegally portray counterfeit parts
10 as approved by creating false invoices, and making materially false representations in entries,
11 certifications, documents, labels, and records. The description of FAA's internal controls in the
12 OIG Report does not make Defendants' aircraft parts fraud more or less probable.

13 Citing alleged vulnerabilities in FAA's oversight, Defendants may also argue that FAA
14 did not detect or alert Defendants that purchasing, shipping, and installing unapproved parts
15 while representing those parts as approved constituted fraud and, therefore, Defendants were
16 ignorant to the crimes they were committing. Well-settled law provides that ignorance of the law
17 is not a valid defense to criminality. *McFadden v. United States*, 576 U.S. 186, 192 (2015)
18 (stating that "ignorance of the law is typically no defense to criminal prosecution"). Here, the
19 Government will show that, among other things, Defendants falsified and concealed material
20 facts concerning aircraft parts, represented unapproved parts as approved, and created false
21 invoices identifying counterfeit parts as legitimate. Defendants knew the information regarding
22 certain aircraft parts was false, even if they argue that they did not know that making those false
23 representations was illegal. The OIG Report does nothing to change Defendants' knowledge or

1 mental state with respect to their continued fraudulent scheme. Instead, admitting the OIG
2 Report and argument relating to the quality of FAA’s oversight of the SUPs program would
3 allow Defendants to “blame the victim” for their abuse.

4 The naivety or gullibility of a fraud victim does not decrease the culpability of the
5 individual committing the fraud. *See United States v. Lindholm*, 24 F.3d 1078, 1087 (9th Cir.
6 1994) (noting that defendant erroneously “attempted to fix blame on the victims he defrauded”
7 when the central issue of guilt was over defendant’s fraudulent intent); *Barnes-Wallace v. City of*
8 *City of San Diego*, 530 F.3d 776, 791 n.1 (9th Cir. 2008) (Berzon, J., concurring) (describing
9 victim-blaming as the tendency to wrongly attribute fault for any injuries to the injured group
10 itself). *See also United States v. Coffman*, 94 F.3d 330, 334 (7th Cir. 1996) (rejecting victim-
11 blaming defense theory and noting that “picking on the vulnerable normally makes your conduct
12 more rather than less culpable”); *United States v. Thomas*, 377 F.3d 232, 243 (2d Cir.
13 2004) (stating a victim’s negligence or gullibility “is not relevant to the inquiry as to whether the
14 defendants were properly convicted”). Defendants cannot evade culpability by blaming FAA for
15 being duped by fraud.

16 For these reasons, both the OIG Report and related argument should be excluded as
17 irrelevant victim-blaming under Rules 401 and 402 of the Federal Rules of Evidence.

18 **II. The OIG Report and Related Argument Should Also Be Excluded As Unduly** 19 **Prejudicial.**

20 The Report and any related arguments should not be admitted because any factual
21 findings from the Report, or argument by Defendants related to such, are unduly prejudicial. The
22 Ninth Circuit has held that “although a broad range of factual findings are potentially
23 admissible” in certain governmental investigatory reports, “the district court retains the
24 discretion to exclude findings” based upon considerations such as the timeliness of the

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1 investigation, whether a hearing was held, and possible bias. *See Sullivan v. Dollar Tree Stores,*
2 *Inc.*, 623 F.3d 770, 778 (2010). The party opposing the introduction of the report carries the
3 burden of persuading the court that the report should not be admitted. *See id.* (citation omitted).
4 And, as always, the court must balance the probative value of a piece of evidence with its
5 potential dangers, and should exclude evidence, even if relevant, where there is a risk that the
6 evidence confuses the issues, misleads the jury, or wastes time. *See Fed. R. Evid.* 403; *United*
7 *States v. Duenas*, No. CR 07-00039-001, 2014 WL 88007, at *7 (D. Guam Jan. 9, 2014).

8 The OIG Report is highly prejudicial because government reports carry an “aura of
9 special reliability” for jurors, regardless of their relevance, trustworthiness, or reliability. *See*
10 *City of New York v. Pullman Inc.*, 662 F.2d 910, 915 (2d Cir. 1981); *United States v. Murgio*,
11 No. 15-CR-769(AJN), 2017 WL 365496, at *16 (S.D.N.Y. Jan. 20, 2017). In fact, “the only
12 effect of introducing such conclusions for their truth would be to place the [OIG Report’s]
13 imprimatur” on Defendants’ “preferred interpretation” of that evidence. *See Murgio*, 2017 WL
14 365496, at *16. Using the Report “in that manner” therefore poses “a genuine threat of usurping
15 the jury’s role.” *Id.*

16 The OIG Report and related argument also are likely to confuse and mislead the jury.
17 The report only concerns the effectiveness of the suspected unapproved parts program; it does
18 not cover FAA’s processes or procedures for issuing airworthiness certificates. Nonetheless,
19 Defendants may attempt to suggest the OIG Report is indicative of issues pertaining to FAA’s
20 oversight as a whole, which may confuse or mislead the jury and may, to reiterate, give the false
21 impression that deficiencies in the agency’s oversight might excuse the Defendants’ criminal
22 conduct. *See United States v. Layton*, 767 F.2d 549, 556 (9th Cir. 1985) (upholding trial court’s
23 exclusion of evidence because of “the effect it would have in confusing the issues”).

1 The Court should, in its discretion, exclude this evidence because its admission would
2 lead to a “mini trial” situation, where countless hours of testimony from FAA officials,
3 government program auditors, risk mitigation specialists, and other experts would be required on
4 the technical intricacies of FAA’s oversight processes. *See Eggleston v. Hayes*, 814 F. App’x
5 284, 285 (9th Cir. 2020) (upholding trial court’s exclusion of relevant evidence because of its
6 potential to mislead the jury); *Ochoa-Valenzuela v. Ford Motor Co. Inc.*, 685 F. App’x 551, 555
7 (9th Cir. 2017) (upholding exclusion of relevant evidence “because its probative value was
8 substantially outweighed by the waste of time that would be involved”); *Tennison v. Circus*
9 *Circus Enters., Inc.*, 244 F.3d 684, 690 (9th Cir. 2001) (affirming trial court’s discretion to
10 exclude probative evidence that would give rise to “an inefficient allocation of trial time”).

11 In sum, under-policing does not absolve crime. Because this evidence is “likely to
12 protract an already prolonged trial with an inquiry into collateral issues,” and may allow
13 Defendants to attempt to evade culpability simply because FAA may have lacked the resources
14 to detect and monitor *all* suspected unapproved parts, the Court should grant the Government’s
15 Motion in Limine and exclude the OIG Report and any related argument. *See Murgio*, 2017 WL
16 365496, at *16.

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1 **CONCLUSION**

2 For the above reasons, the United States respectfully requests the Court grant this motion
3 to exclude the OIG Report and argument relating to the quality of FAA's oversight of the SUPs
4 program.

5 RESPECTFULLY submitted this 23rd day of July, 2021.

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